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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,943	08/04/2003	Gregory Winfield Gorman	408392	5211
30955 7590 05/02/2008 LATHROP & GAGE LC 4845 PEARL EAST CIRCLE SUITE 300 BOULDER, CO 80301				
			EXAMINER AHMAD, NASSER	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 05/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Mailed : 5-2-08
In re Application of
Gregory W. Gorman
Serial No. 10/633,943
Filed: August 4, 2003
For: INFORMATION-BEARING PAVEMENT TAPE

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: DECISION
: GRANTING
: PETITION
:
:

This is a decision on the March 6, 2008 "Petition to the Director under 37 CFR 1.181 and 1.182."

Applicant filed an appeal brief on May 2, 2007, which was followed in due course by the examiner's answer mailed August 22, 2007. This in turn was followed by a reply brief filed on October 22, 2007. In a communication dated January 8, 2008, the examiner refused entry of the reply brief.

The instant petition was then timely filed on March 6, 2008 and is before the Director of Technology Center 1700 for consideration. The petition requests that the reply brief of October 22, 2007 be entered and considered.

The petition is **GRANTED** for the reasons below.

DECISION

As background, reply briefs and the proper treatment thereof are governed by 37 CFR 41.41 and 41.43:

§ 41.41 Reply brief.

(a)

(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

(2) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(b) A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with

paragraph (a) of this section.

(c) Extensions of time under § 1.136 (a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136 (b) of this title for extensions of time to reply for patent applications and § 1.550 (c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.43 Examiner's response to reply brief.

(a)

(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

As noted in MPEP 1208, "Under 37 CFR 41.41(a)(1) and 41.43(b), appellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer or supplemental examiner's answer... If a reply brief is filed in compliance with 37 CFR 41.41, the primary examiner must acknowledge receipt and entry of the reply brief."

In the instant case, the reply brief was in compliance with 37 CFR 41.41, as it was filed within two months of the answer and did not include any new or non-admitted amendment, affidavit, or other evidence. The examiner thus had no basis to entry to the reply brief.

Therefore the instant petition is **GRANTED**.

The application is being forwarded to the art unit, for entry and consideration of the reply brief, and for other such action as may be appropriate.



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10/633,943

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